

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 93 of 1999

in

SPECIAL CIVIL APPLICATION NO 10391 of 1998

with

LETTERS PATENT APPEAL NO.94 OF 1999

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR CK THAKKER and
MR.JUSTICE M.C.PATEL

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Orde

5. Whether it is to be circulated to the Civil Judge?

GOVERNMENT OF GUJARAT

Versus

AHMEDABAD COMPUTER MERCHANT ASSOCIAATION

Appearance:

In LPANo.93 of 1999

MR.P.G.DESAI, GOVERNMENT PLEADER for Appellants

MR. P. M. RAVAL, SENIOR ADVOCATE FOR MR HARIN RAVAL, FOR THE RESPONDENTS.

In LPA 94 of 1999.

Mr. P.M.Thakkar, Sr.advocate for Thakkar Associates
for appellants

Mr.P.M.Raval, Senior advocate for Mr.Harin Raval,advocate for the

Respondents.

CORAM : ACTING CHIEF JUSTICE MR CK THAKKER and

MR.JUSTICE M.C.PATEL

Date of decision: 01/02/99

ORAL JUDGEMENT

Oral judgment: Per Thakkar,Act.C.J.

Admitted. Learned advocates for the respective parties waive service of notice of admission. In the facts and circumstances of the case and with the consent of parties the matters have been taken up for final hearing today.

Both these appeals arise out of an order passed by the learned Single Judge in Special Civil Application No. 10391 of 1998 ,dated December 29,198. The said order reads as under :

"Leave to complete the annexure.

Rule returnable in 2nd week of February 1999.

Ad-interim relief granted earlier directing the parties to maintain status quo shall continue till further order. It is clarified that the pendency of this petition and granting of interim relief will not come in the way of the State Government to invite fresh tenders giving an opportunity to the petitioner as well as the concerned respondents and others in respect of the items mentioned in resolution dated 10.9.199,Annexure I to this petition. Mr.Sompura waives service for respondent Nos.1 and 2 and Mr., M.M.Desai waives service of rule for respondent No.3."

Few relevant facts may now be noted . Ahmedabad Computer Merchants Association and others had filed the above petition for the following reliefs in terms of para 35 which reads as under :

"35 (A) That this Honourable court will be pleased to issue a writ of mandamus and/or certiorari and/or any other appropriate writ,order or direction,quashing and setting

aside the impugned resolution dated 10.9.1998
Annexure 'I' to this petition.

(B) Pending hearing and final disposal of this
this petition, this Honourable court will be
pleased to direct the respondents to call for
the offer from the S.S.I."

The petition was filed on December 4,1998. It appears
that initially, Notice was issued on December 7,1998 and
was made returnable on December 15,1998. At that time,
the appellant of LPA No. 94/99 S.Kumar Computer Division
was not a party-respondent. On December 16,1998, when the
matter was taken up for hearing, the following order was
passed:

"Leave to amend. Leave to join M/s S.Kumar
Computers ,Division of S.Kumar Industries Ltd.
Notice to the newly added party returnable on
23.12.1998 . In the meantime, the respondents
are directed to maintain status quo with respect
to any transaction with the newly added party .
D.S.permitted."

Then on December 29,1998, the order extracted above was
passed by the learned Single Judge.

The matter is ordered to be placed for final hearing in
the second week of February 1999 and the interim relief
as stated above was granted.

The case of the petitioners was that on September
10,1998, the Government issued a resolution laying down
guidelines for computerisation and computer system to be
provided for various departments of the State Government
and asked bids from certain parties. Tenders were
accordingly issued .The petitioner is an association
registered under the provisions of Bombay Non-trading
Corporations Act. It is the case of the petitioner that
it was an association of manufacturers of computers and
merchants dealing in computers and computer hardware etc.
and that the manufacturing members were Small Scale
Industries (SSI) registered with the Industrial
Commissionerate . Though they ought to have been
permitted to participate in the bid, they were excluded
from the process . It is clear that following persons
were asked to put forward bids:

1. HCL Info Systems Ltd.
2. Wipro Acer Ltd.
3. Zenith Computers

4. Tat IBM Ltd.
5. Compaq Computers Asia Pacific
6. Dell Computers
7. Gewlett Packard Ltd.
8. Digital Equipment India Ltd.

The case of the petitioners was that the action of the Government of not permitting them to offer bid, is arbitrary, unreasonable and violative of Articles 14,19 and 21 of the Constitution of India.

According to the learned Single Judge, the petition required consideration and hence, Rule was issued. Regarding interim relief, the learned Single Judge observed that the petitioners were entitled to interim relief as they had made out a case for such relief. The learned Single Judge ,however,observed that it was open to the Government to invite fresh tenders giving an opportunity to the petitioners and others in respect of the terms mentioned in the resolution dated September 10,1998.

We have heard Mr. P.G. Desai ,learned Govt.Pleader in Letter patent appeal No.93 of 1999 and Mr.P.M.Thakkar , learned Senior advocate instructed by Thakkar Associates for the appellant in Letters patent appeal No. 94 of 1999. We have also heard Mr. P.M.Raval, learned senior advocate for Mr.Harin Raval for the petitioners.

The learned counsel for the appellants raised several contentions. It was urged that though the learned Single Judge had granted interim relief by which the order passed by the authorities has been suspended,no reasons were recorded and no grounds have been put forward as to why interim relief was granted . It was also contended that there was delay and laches on the part of the petitioners in approaching the Court inasmuch even though the tenders were issued in October 1998 and the petitioners were aware that they were not permitted to bid, they had not approached this court and only after acceptance of offer of the appellant of LPA No. 94 of 1999 on December 1,1998, the petition was filed on December 4,1998. The learned Single Judge ought to have taken into consideration the said relevant and germane facts and ought not to have granted interim relief. It was submitted that virtually final relief was granted in favour of the petitioners at interlocutory stage. According to the learned counsel,as per settled law, ordinarily in such matters, no interim relief could have been granted , and that too, without recording reasons.

According to the appellants, it was for the Government to take a policy decision regarding short-listing of bidders and if the Government was of the view that only some parties who, in their opinion, could perform such function could be permitted to bid, such action, by no stretch of imagination, can be said to be arbitrary or unreasonable. It is in the realm of policy and in absence of mala fide or colourable exercise of power, this Court ought not to have exercised its extraordinary jurisdiction under Article 226 of the Constitution of India.

Mr. Raval, learned counsel for the petitioners, on the other hand, supported the order passed by the learned Single Judge. He submitted that the petitioners could be said to be "persons aggrieved" and hence they can always come to this court by making a grievance against the action taken by the authorities. According to Mr. Raval, the action of the respondent authorities was not only illegal, arbitrary and unreasonable but unjust inasmuch as the petitioners were ready and willing to perform the said work within the stipulated period and that too in about 75% of the total amount for which the contract is sought to be given to the appellant of LPA No. 94 of 1999. He also submitted that the impugned action of the Government is contrary to the declared policy of the State Government to encourage SSI units which is reflected in various resolutions and circulars issued from time to time. According to Mr. Raval, though in policy matters, the Government has wide powers, it is incumbent on the authorities to consider cases of all eligible persons at the initial stage. If that is not done, an action can always be interfered with by this court in exercise of powers under Article 226 of the Constitution of India. In the instant case, according to Mr. Raval, though the petitioners were eligible and their case was, therefore, required to be considered, by excluding them altogether, an arbitrary action was taken and the learned Single Judge was satisfied that the action was illegal and hence, if interim relief is granted, the order cannot be said to be contrary to law.

It was also submitted that grant of interim relief is in the discretion of the Court. When Rule was issued, it cannot be said that the learned Single Judge could not have granted interim relief. Moreover, there was delay on the part of the appellants also in approaching this court. Though interim relief was granted in December 1998, for considerably long time, neither the State Government nor the aggrieved party moved this Court. Again, today, it is February 1, 1999. According to Mr.

Raval, Rule is made returnable on February 7, 1999 and hence, there is no reason to interfere with the order when the petition is likely to be disposed of within a short period. He, therefore, submitted that no case can be said to have been made out by the appellants to interfere with the order passed by the learned Single Judge .

Having heard the learned advocates for the parties, we are of the view that in the facts and circumstances, the learned Single Judge ought not to have granted interim relief in favour of the petitioners. It is no doubt true that grant of interim relief is in the discretion of the Court. But at the same time, the Court is required to consider the facts and circumstances and the reasons/ grounds which weighed with the Court for granting such relief. It may not be necessary to record detailed reasons but when the question relates to grant of interim relief, in such matters, ordinarily, it is expected of the Court to apply its mind and to narrate the circumstances which necessitated granting of interim relief. In the instant case, the matter relates to grant of contract of supply of computers. In our opinion, *prima facie*, the contention of the appellants appears to be well founded that it is in the realm of policy . True it is, that if the policy decision is arbitrary, unreasonable or is violative of fundamental rights of the petitioners, it can be interfered with by the court in exercise of powers under Article 226 of the Constitution of India. But ordinarily, such question can be decided at the time of final hearing. Again, it is the case of the State Government that taking into consideration the bulk of work, huge capital investment, knowledge and

experience, it was decided by the Government to shortlist eight companies and accordingly, decision was taken to consider the bids of those companies only . So far as the petitioners are concerned, they are registered as SSI unit. Therefore, *prima facie*, it cannot be said that they can be said to be similarly situated with the appellants. It is not even reflected in the interim order passed by the learned Single Judge that even though the petitioners were similarly situated to those eight persons, their case was not considered. If in light of the facts and circumstances , the case of the petitioners was not considered by the respondent authorities, it cannot be said that by doing so, the action was taken which was arbitrary, discriminatory or unreasonable which required grant of interim relief at interlocutory stage.

So far as law relating to issuance of tenders and grant

of Government largess are concerned, the law is well settled. Our attention was invited by the learned advocates for parties to the following decisions:

(1) Tata Cellular vs. Union of India, AIR 1996, S.C. 11;

(2) Sterling Computer vs. M/s M & N Publications Limited, AIR 1996 SC 51;

(3) Shri Sachidanand Pandey vs. State of W.B., AIR 1987 SC 1109;

(4) Rasbihari Pandey vs. State of Orissa, AIR 1969 SC 1081;

(5) E.E. & C vs. State of Orissa, AIR 1975 SC 266;

(6) Kasturilal vs. State of J & K, AIR 1992, SC 1992;

(7) Mahabir Stores vs. Indian Oil Corporation, AIR 1990 SC 1031 AND

(8) Admir Ghosh vs. State of W.B., AIR 1998 Cal. 317.

In our opinion, it is not necessary to discuss in detail all these decisions particularly when the main petition awaits final hearing. In the facts and circumstances, in our opinion, the order passed by the learned Single Judge at this stage was not called for and accordingly, both the appeals deserve to be allowed and are accordingly allowed. Interim order passed by the learned Single Judge is quashed and set aside.

Before parting with the judgment. we may observe that all the above observations have been made by us only for deciding these appeals and we may not be understood to have stated anything on merits. As and when the petition will be taken up for final hearing, the learned Single Judge will decide the same strictly on its own merits without being influenced by the observations. The appeals are accordingly allowed. No order as to costs.

Mr. Raval for the petitioners prayed that interim relief granted by the learned Single Judge may be continued for some time so as to enable them to approach higher forum. The prayer is objected to by the other side. In view of the fact that in our opinion, such interim relief ought not to have been granted by the learned Single Judge, the prayer made by Mr. Raval cannot be granted. Hence the prayer is rejected.

